TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. 632.

H. R. HALL, T. F. CONLEY, G. W. BETTIS, AND JAMES A. CARTER, PLAINTIFFS IN ERROR,

vs.

WILLIAM JORDAN.

IN ERROR TO THE SUPREME COURT OF THE STATE OF TENNESSEE.

FILED MARCH 19, 1872.

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1 THE STATE OF TENNESSEE:

Pleas before the supreme court of said State for the western division thereof, at Jackson, on the first Monday in April, 1871—present, the Honorable A. O. P. Nicholson, chief justice, and James W. Deaderick, Thomas J. Freeman, John L. T. Snead, Thomas A. R. Nelson, and Peter Turney, associate judges:

Be it remembered that heretofore, to wit, on the 5th day of April, 1871, the following transcript was filed in the office of the clerk of the supreme court at Jackson:

WILLIAM JORDAN, COMPLAINANT,
vs.
H. R. HALL AND T. F. CONLEY, DEFENDANTS.

Pleas before the honorable chancery court, held for the county of
2 Lauderdale at the court-house in the town of Ripley, Tennessee, on the third Monday in November, 1870, (it being the 21st day of said month)—present and presiding, the Honorable James Fentress, chancellor of the tenth chancery division of the State of Tennessee.

Prosecution bond.

Know all men by these presents that we, William Jordan and Thomas A. Jordan, are held and firmly bound unto H. R. Hall and T. F. Conley in the just and full sum of two hundred and fifty dollars; for the payment of which, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, firmly by these presents, sealed with our seals and dated this the 22d day of June, 1868.

Now, the condition of the above obligation is such, that whereas the above-bounden William Jordan, has this day filed a bill of complaint in our chancery court at Ripley against the said H. R. Hall and T. F. Conley: Now, if the said William Jordan, complainant, shall
3 prosecute said suit with effect, or on failure shall pay to said H. R. Hall & T. F. Conley all such costs and damages as may be awarded against him, then this obligation to be void; otherwise remain in full force and virtue.

T. A. JORDAN.

Attest:
T. B. CARSON, *C. & M.*

Original bill.

WILLIAM JORDAN, OF DYER COUNTY, TENNESSEE, complainant,
vs.
H. R. HALL & T. F. CONLEY, BOTH OF GIBSON COUNTY, TENN'SSEE.

To the Honorable John W. Harris, chancellor, &c., presiding at Ripley, in a court of chancery for Lauderdale County, Tennessee:

Complainant would respectfully show unto your honor that, on the 1st day of November, 1866, he sold to defendants his plantation, com-

posed of several tracts of land, making a body of about seven hundred acres, situated in said county, and particularly described in a
4 deed executed by complainant the defendants at the time, which deed has been duly registered in said county, and a certified copy whereof is herewith filed, marked "A," as part of this bill; that at the time of said sale defendants executed to complainants their note or a bond for a balance of the purchase-money for said lands, (which will be produced on or before the hearing,) which note was due December 25th, 1867, and on which about eight thousand ($8,000) dollars is still due and unpaid, and for which complainant is entitled in equity to a lien on said land. The premises considered, complainant prays that the parties so named in the caption be made defendants to this bill, with apt and proper words to charge them; that subpœna and copies issue to the sheriff of Gibson County, returnable to August rules, 1868; that they answer, &c.; and, finally, that complainant's vendor's lien against said land be enforced; that an account be taken to ascertain the balance of the purchase-money due complainant, and that said land be sold for the satisfaction of the debt so found due complainant; and for such other further and general relief
5 as the nature of the case may require; and he, as in duty bound, will ever pray, &c.

F. G. SAMPSON,
Sol. for Complainant.

Filed June 22nd, 1868.

T. B. CARSON, *C. & M.*

Subpœna to answer.

STATE OF TENNESSEE:

To the sheriff of Gibson County:

Summon H. R. Hall and T. F. Conley to appear on the 1st Monday in August next, (it being rule day,) before the chancery court at Ripley, to answer the bill of William Jordan; and have you then and there this writ. Witness T. B. Carson, clerk & master of our said chancery court, at office in Ripley, this the first Monday after the fourth Monday in June, 1868.

T. B. CARSON, *C. & M.*

Endorsements on subpœna.

Issued June 22nd, 1868.

T. B. CARSON, *C. & M.*

6 We acknowledge service of the within subpnœa and copies received of complainant's bill, July 7, 1868.

H. R. HALL.
T. F. CONLEY.

Attest:
A. B. TIGRETT, *Dep. Sh'ff.*

Exhibit A to original bill.

William Jordan to H. R. Hall & T. F. Conley. Deed.

I, William Jordan, of the county of Lauderdale and State of Tennessee,

have this day bargained and sold, and do hereby transfer and convey, unto H. R. Hall and T. F. Conley, of the county of Gibson and State of Tennessee, and their heirs & assigns forever, for the consideration of thirteen thousand dollars, to me in hand paid, the receipt whereof is hereby acknowledged, a tract of land lying and being situate in the seventh civil district of Lauderdale County and State of Tennessee, and bounded as follows, to wit: Beginning at a stake in the south
7 boundary line of C. W. Anderson, it being the N. E. corner of Henry Crichfield's Russell tract of land, and William Walpole's northwest corner; running thence east four hundred and four poles and five links, to a sweet gum, horn-bean, and beach pointers; thence south two hundred and ninety-one poles and 11¾ links, to two hickorys and dog-wood; thence west two hundred and seventy-two poles, to four paw-paws, with a sycamore and black-walnut pointers; thence north twenty-nine poles 11¾ links, to a stake, a hickory, two elms, and large white-oak pointers; thence west 85° south one hundred and twenty-eight poles, to a sweet gum and beach, Z. Mitchel's southeast corner; thence north two hundred and sixty-two poles and seven links, to the beginning, containing seven hundred acres, be the same more or less: To have and to hold the same to the said H. R. Hall and T. F. Conley, their heirs and assigns. I do covenant with the said H. R. Hall and T. F. Conley that I am lawfully seized of said land, have a good right to convey it, and that the same is unincumbered. I do further cove-
8 nant and bind myself, my heirs, and assigns to warrant and forever defend the title to said land and every part thereof, to the said H. R. Hall and T. F. Conley, their heirs, and assigns, against the lawful claims of all persons whomsoever.

In witness whereof I have hereunto set my hand and seal this the 1st day of November, 1866.

WILLIAM JORDAN. [SEAL.]

[U. S. revenue, 13$.]

Test:
T. B. CARSON.
S. H. EARLE.

STATE OF TENNESSEE,
Lauderdale County:

Personally appeared before me, George Johnstone, clerk of the county court of said county, William Jordan, the bargainor, with whom I am personally acquainted, and who acknowledged that he executed the foregoing deed for the purposes therein contained.

Witness my hand at office, this the 15th day of November, 1866.

GEORGE JOHNSTON, *Clerk.*

Rec'd the State tax, $13 00.

9 Presented for registration on the 16th day of November, 1866, at 5½ o'clock a. m.

JOHN D. BAXTER, *Register.*

STATE OF TENNESSEE, *Lauderdale County:*

I, John D. Baxter, register of said county, do certify that the foregoing instrument is a true copy of the record in my office, found in book J, page 726-'7.

Witness my hand at office, 26th day of June, 1868.

JOHN D. BAXTER, *Register.*

Demurrer to O. B.

In chancery. Lauderdale county, Tennessee.

W'M JORDAN
vs.
H. R. HALL & T. F. CONLEY.

Defendants, by attorney, demur to the bill of complainants, exhibited against them; and for cause of demurrer they say that complainant has no right to have and maintain his action against them in the county of Lauderdale.

McFARLAND & FREEMAN,
Solicitors for Defendants.

(Demurrer endorsed:) Filed August the 3rd, 1868. T. B. Carson, C. & M.

Caption of court, August special term, 1868.

STATE OF TENNESSEE:

Whereas the Honorable John W. Harris, chancellor of the 6th chancery district of said State, appointed a special term of the chancery court at Ripley, for the county of Lauderdale, on the 2d Monday in August, 1868, it being the 10th day of said month, by publication in The West Tennessean, a newspaper in said district, and by giving notice in writing to the clerk of this court 30 days before this date, which publication and notice were duly made and given.

And now, on the date aforesaid, at the court-house in the town of Ripley, in said county, said court was duly opened and held—
11 present and presiding the Honorable John W. Harris, chancellor, &c., and T. Burr Carson, clerk & master.

On the first day of said term the following proceedings were had and entered of record, to wit:

MONDAY, *August* 10*th*, 1868.

W'M JORDAN
vs.
H. R. HALL & T. F. CONLEY.

Be it remembered that, on this the 10th day of August, 1868, came on this cause for hearing on the bill and the demurrer of the defendants, filed at the August rules; when, on argument of counsel and the matters of law arising thereon, it appears to the court that said demurrer is not well taken.

It is, therefore, considered by the court that said demurrer be overruled, and that defendants answer over by October rules.

Let complainants recover of defendants the cost of this demurrer, for which let execution issue.

12 *Answer to O. B.*

In chancery. At Ripley.

W'M JORDAN
vs.
H. R. HALL & T. F. CONLEY.

The respondents, for answer to so much of complainant's bill as they

are advised is material for them to answer, answering, say that it is true respondents purchased of complainant a tract of land containing about acres. It is further true that a portion of the purchase-money is unpaid.

Respondents further say that, after the purchase of said land, and before the deed executed by the said Jordan had been acknowledged or registered, the same land was attached at the instance of one Thomas Fitzhugh; that said suit is still pending; and if successfully prosecuted, will, as respondents are informed and believe, reduce said Jordan to insolvency.

They further say that on said tract of land there is a grave-yard, the existence of which respondents knew nothing of at the time of their purchase. Said grave-yard occupies a beautiful building-site,
13 and detracts materially from the value of the land. That said grave-yard is not reserved in said Jordan's conveyance to respondents, who are informed and believe that said Jordan had no title to the same.

Respondents, further answering, say that if said Jordan will remove the encumbrances, or if your honor, upon the final hearing of this cause, shall consider that these are no encumbrances upon the title of said Jordan, they are willing to pay, in the lawful currency of the United States, the No. of dollars specified in said note.

Respondents, further answering, say that, notwithstanding said encumbrances, these respondents have at divers times offered to pay off said note in the manner and form above stated, but complainant insists that the same shall be paid off in gold coin, or in the value thereof in lawful currency.

They further say that said notes were drawn in manner and form as will appear from inspection at the special instance and request of said Jordon, who gave as a reason that the Goverument of the United States was rotten and corrupt; that its currency was worthless. They further say that said notes were drawn at the request of said
14 Jordan with the express view of evading the legal-tender act of of the United States. They further say that they have already, to wit, in the early part of the year 1868, paid two thousand dollars on said notes, and that they are entitled to a credit for the same.

Having answered all that is material for them to answer, they pray to be hence discharged with their reasonable costs and charges.

McFARLAND & FREEMAN,
Solicitors for Respondents.

STATE OF TENNESSEE,
Dyer County:

Personally appeared before me, F. G. Sampson, an acting justice of the peace for said county, H. R. Hall, one of the defendants named in the foregoing answer, who, being duly sworn, says that the matters and things set forth in the same as of the knowledge of the said respondent he believes to be true, and that, upon information and belief, he believes to be true.

H. R. HALL.

Sworn and subscribed to before me on the 28th of September, 1868.
F. G. SAMPSON, *J. P.*

15 (Answer endorsed:) Filed October the 3rd, 1868. T. B. Carson, C. & M.

At the November term 1868, the following proceedings were had and entered of record, to wit:

MONDAY, *November 23d*, 1868.

WM. JORDAN
vs.
H. R. HALL & T. F. CONLEY. } Vendor's bill.

As on affidavit of the defendants, this cause is continued until the next term of this court.

At the November term, 1869, the following further proceedings were had and entered of record, to wit:

NOVEMBER THE 23RD, 1869.

WM. JORDAN
vs.
H. R. HALL & T. F. CONLEY. } Vendor's bill.

16 On affidavit of defendants, this cause is continued until the next term of this court.

Caption of May term, 1870.

STATE OF TENNESSEE:

Pleas held before the Honorable John W. Harris, chancellor, &c., of the 6th chancery division of the State of Tennessee, held in the Presbyterian church in the town of Ripley, Tennessee, (the court-house being burned down,)—present and holding said court, the Honorable John W. Harris, chancellor, &c.; T. B. Carson, clerk & master, and C. C. Greggs, sheriff of said county.

On the 2nd day of said term the following proceedings were had and entered of record, to wit:

MAY THE 31ST, 1870.

H. R. HALL & T. F. CONLEY
vs.
W'M JORDAN. } Cross-bill.

In this cause the complainants move the court for permission to file their cross-bill against the defendant, William Jordan; which
17 bill, being read, was ordered to be filed, on their giving bond and security in open court in the sum of fifteen hundred dollars.

On the fourth day of said term the following further proceedings were had and entered of record, to wit:

JUNE THE 2ND, 1870.

H. R. HALL & T. F. CONLEY
vs.
W'M JORDAN. } Cross-bill.

Complainants allowed to file their cross-bill in the above-named cause upon their giving bond in open court in the sum of fifteen hundred

dollars, which is accordingly done, and which bond was acknowledged in open court and approved by the court, and the bill filed accordingly in open court.

Bond on cross-bill.

Know all men by these presents the we, H. R. Hall, T. F. Conley, W. B. Sawyer, and Thomas Ferguson, are held and firmly bound
18 unto W'm Jordan in the just and full sum of fifteen hundred dollars, for the payment of which, well and truly to be made, we and each of us bind ourselves, our heirs, executors, and administrators, jointly and severally, firmly by these presents, sealed with our seals and dated this the 2nd day of June, 1870.

Now, the condition of the above obligation is such, that whereas the above-bound H. R. Hall and T. F. Conley have this day filed a cross-bill of complaint in the cause of W'm Jordan against H. R. Hall and T. F. Conley in our chancery court at Ripley, Tennessee, against the said W'm Jordan, defendant, and prayed for and obtained the issuance of writs of subpœna upon the matters therein set forth:

Now, if the said H. R. Hall and T. F. Conley, complainants, shall prosecute said suit with effect, or on failure shall pay to said W'm Jordan all such costs and damages as may be awarded against them, then this obligation to be void; otherwise to remain in full force and effect.

H. R. HALL, [SEAL.]
T. F. CONLEY, [SEAL.]
Per T. E. RICHARDSON, *Att'y.*

[Internal revenue stamp, $1 00.]

19 T. F. CONLEY,
Per W. D. WILKERSON, *Att'y.*
W. B. SAWYER,
By att'y in fact J. H. WARDLAW.
THOMAS FERGUSON.

(Foregoing bond endorsed:) Filed by order of court in open court, June 2nd, 1870. T. B. Carson, C. & M.

Cross-bill.

H. R. HALL AND T. F. CONLEY, THE FORMER A resident of Gibson County, Tennessee, and the latter a resident of Haywood County, Tennessee, complainants,
vs.
WILLIAM JORDAN, A RESIDENT OF DYER COUNty, Tennessee, defendant.

To the Honorable John W. Harris, chancellor, &c., holding the chancery court at Ripley for the county of Lauderdale:

20 Complainants respectfully show to the court that, about the 1st day of November, 1866, they purchased from defendant a tract of land in Lauderdale County, Tennessee, containing about seven hundred acres, at and for the sum of thirteen thousand dollars, and said defendant executed to the complainants a deed for the same, describing said land by metes and bounds, in which deed he covenanted to said compl'ts that he was lawfully seized of said land, and had a good right to convey same, and that it was unencumbered. Said

deed also contained covenants of general warranty of title. Copy of said deed will be filed on the hearing of this cause. The amount of the United States revenue stamps attached to said deed was thirteen dollars. Complainants paid purchase-money at the time of said purchase, the sum of six thousand five hundred dollars, and executed to defendants their note, due 25th of December, 1867, for six thousand eight hundred and ninety dollars, payable in the current gold coin of the United States, a considerable part of which note they have since paid.

Complainants further represent that, in June, 1868, defendant,
21 William Jordan, filed his original bill in the chancery court at Ripley, against complainants, seeking to enforce his lien as vendor against said land for the balance of the purchase-money, which bill has been answered by complainants. At the time of said sale and purchase, there was upon said *said* land a family burying-ground or grave-yard. The same was situated near the northwest corner of said tract of land, on a high, dry, beautiful building-site, the only building-site of that character on that part of said land. The existence of said grave-yard at the time of said purchase and conveyance was unknown to complainants, and greatly detracts from the value of the land.

And said Jordan fraudulently concealed from compl'ts the fact that he had no title to the same. Compl'ts further charge that the covenants of seizin in the deed from said Jordan to them has also been broken, so far as the same relates to said grave-yard, over about fifty acres of land in the northwest corner of the tract conveyed by Jordan to complainants; that said Jordan represented to compl'ts that there were only two or three graves on the place, and that they could be
22 easily moved. Since said sale and purchase, and since the filing of said Jordan's bill aforesaid, compl'ts are advised and believe that said Jordan had no right or title to the ground covered by the grave-yard, but that the title to the same had been forever reserved by his, said Jordan's, vendors. This fact has since been admit'ed by def't Jordan.

Compl'ts further state that to the about fifty acres of land containing said grave-yard, situated in northwest corner of said 700-acre tract conveyed to compl'ts by said Jordan, the said Jordan has no sufficient title; that compl'ts have made diligent search among the records in the register's office for Lauderdale County, and have been wholly unable to find any evidence of title to said fifty acres in said Jordan, and charge that said Jordan was not so legally seized of the same at the time of making said deed to compl'ts, nor has he become so since, as to enable him to make a sufficient title thereto to compl'ts. Compl'ts charge that the existence of said grave-yard decreases greatly the value of said land, occupying, as it does, the finest and only desirable building-
23 site on that part of said ; that the sale to compl'ts of said land without making known the fact of the existence of said grave-yard was a fraud upon the compl'ts, and that they are entitled to an abatement of the purchase-money to the amount that the value of said land is depreciated by the existence of said grave-yard.

Compl'ts further charge that said Jordan, by his original bill, is seeking to recover largely more than the amount of thirteen thousand dollars and interest thereon, the original purchase-money of said land, and largely more than the amount covered by the revenue stamps attached to said deed; and compl'ts charge that, if he is allowed to do so, the deed executed will be absolutely null and void, and convey no title to them, by reason of its being insufficiently stamped.

The premises considered, compl'ts pray that they may be allowed to file this as their cross-bill to said Jordan's original bill; that the said Jordan be made a party defendant thereto; that copy and subpœna issue, and that he be required to answer the same; but answer
24 under oath is expressly waived; that said Jordan be required to set out and exhibit his evidence of title to said fifty-three acres of land to the northwestern part of said tract so conveyed, showing that he was legally seized of said land at the time of the conveyance; that an account be ordered and taken herein, to ascertain how much compl'ts have been or may be damaged by the existence of said graveyard on said land, or said Jordan's inability to make title to it or any other part of said land.

Compl'ts further pray, that if said Jordan is allowed to collect, as he is seeking to do, an amount larger than 13,000$, the original purchase-money for said land, that he be compelled to execute to compl'ts a deed, sufficiently stamped to be valid and binding, and that if compl'ts are mistaken in *his* remedy hereby asked, specifically, will the court grant such other and general relief as the nature of the case may require, and the same as is specially prayed for; and compl'ts will ever pray, &c.

LATTA & RICHARDSON &
WILKINSON & WILKERSON,
Solicitors.

25 STATE OF TENNESSEE, *Lauderdale County:*

H. R. Hall makes oath, in due form of law, that the facts stated in the foregoing answer are true to the best of his knowledge, information, and belief.

H. R. HALL.

Sworn to and subscribed before me, May 31st, 1870.

T. B. CARSON, *C. & M.*

Filed June 1st, 1870.

T. B. CARSON, *C. & M.*

Demurrer to cross-bill.

In chancery court at Ripley, Tennessee.

H. R. HALL & T. F. CONLEY
vs.
WILLIAM JORDAN. } Demurrer.

The defendants demur to complainants' bill, and assign as cause for the demurrer—

1st. That the court has no jurisdiction to grant the complainants the relief sought in their bill, because they have full, adequate, and complete remedy at law.

26 2nd. Because the complainants have no right to file such bill, except by leave of the court, granted upon special application showing sufficient grounds to the court for granting such relief.

3rd. Because said bill does not offer that the original and said cross-bill may be heard upon the depositions and proof already published.

4th. Because said bill does not show any sufficient cause or excuse for not filing the same on or before the last term of this court.

5th. Defendant demurs to that part of complainants' bill which seeks an evadement of the purchase-money for want of title to 50 acres of land in the pleadings mentioned, because the court has no jurisdiction to grant said relief, complainants having full, adequate, and complete remedy at law. Defendant demurs to the whole bill because the complainants do not show that they have been ejected of said land or any part thereof, or that any suit has been brought against them for the same, or this defendant is insolvent.

T. G. SAMPSON,
MARLEY & STEELE,
Sol's for Defendant Jordan.

Filed June 2nd, 1870.

T. B. CARSON, *C. & M.*

27 *Caption of court.—May term*, 1870.

THE STATE OF TENNESSEE:

Pleas held before the Honorable John W. Harris, chancellor, &c., of the sixth chancery division for the State of Tennessee, for the county of Lauderdale, held in the Presbyterian church, in the town of Ripley, Tennessee, (the court-house being burned down,)—present and holding said court, the Honorable John W. Harris, chancellor; & T. B. Carson, clerk & master, and Charles C. Griggs, sh'ff of said county.

On the third day of said term the following proceedings were had and entered of record, to wit:

JUNE 2ND, 1870.

H. R. HALL & T. F. CONLEY
vs.
WILLIAM JORDAN. } Cross-bill.

This cause coming on this 2nd June, 1870, upon the demurrer
28 to the cross-bill in this cause; and said demurrer being heard and understood by the court, it is considered by the court that the said demurrer is not well taken, but it is overruled by the court. It is therefore ordered that the defendant, William Jordan, pay the cost of said demurrer, for which let execution issue, as to law, &c.

Answer to cross-bill.

The answer of William Jordan to the cross-bill of H. R. Hall and T. F. Conley, filed against him in chancery at Ripley, Tennessee.

Respondent, saving, reserving, &c., for answer to so much and such parts of said cross-bill as he is advised is material for him to answer unto, answering, says that it is true he sold and conveyed to complainants a tract of about seven hundred acres of land, in Lauderdale County, Tennessee, on the 1st day of November, 1866, for thirteen thousand dollars in gold, of which compl'ts, a short time after the said trade, him six thousand five hundred dollars in gold; and for the remainder, with interest, until December 25th, 1867, they executed
29, 30 to respondent their note, due December 25, 1867, in the following words and figures, to wit:

"On the 25th day of December, 1867, we, or either of us, promise to pay William Jordan, an amount, in the legal currency of the United States, sufficient to purchase at that time six thousand eight hundred and ninety dollars in the present gold coin of the United States, for value received, in the purchase of a tract of land of him.

"This the 1st day of November, 1866.

"H. R. HALL.
("Signed) "T. F. CONLEY,
"Per HALL."

[Stamp affixed, 5$.]

On the 23rd March, 1868, complainants paid to respondent an amount in currency equal to the sum of thirteen hundred and four dollars and 34 cents in gold coin; and on the 27th of May, 1868, the further sum equal to one hundred and forty-four dollars 92 cents in gold coin. The balance is still unpaid.

Respondent admits that he filed his original bill in this honorable court to enforce his lien as vendor against said land for the bal-
31 ance of the purchase-money due him on the 22d of June, 1868, which is still pending; that complainants had answered said bill and had procured two continuances before the cross-bill was filed.

Respondent admits that there is a grave-yard in the northwest corner of said seven hundred acres of land, (¼ of an acre,) to which respondent had no title, and by an oversight, and unintentionally, said grave-yard was not reserved in his deed to the complainants; but it is not true that the existence of said grave-yard was concealed from said complainants, but they were, in fact, led to the grave-yard by respondent, and shown its extent, and the reservation (by recollection) explained to them as ¾ of an acre.

Respondent positively denies that there was any fraud, misrepresentation, or concealment practiced by him on complainants, either in regard to the existence, extent, or title to the grave-yard, except that he had forgotten the amount of the reservation and represented it larger than it is.

Respondent positively denies that his covenant of seizin or warranty to any portion of said land has been broken, but says complain'ts have enjoyed the possession of the whole of said land, without let or hin-
drance heretofore, and that respondent had good title to the 50
32 acres of land in the northwest corner of the 700 acres, except the grave-yard, under the decree of the county court of Lauderdale County, Tennessee, a certified transcript of which is herewith filed, marked Exhibit "B," as part of this amount.

Respondent positively denies that he told to complainants, or either of them, that there was only two or three graves there and that they could be easily moved; but, in fact, he says he showed them the grave-yard, and told them both that it was not his and he could make no title to it.

Respondent knows nothing of the diligent search made by complainants in the register's office for evidence of his title to said 50 acres of land, but he has always been ready and willing to exhibit his title to the same, if desired.

Respondent distinctly answers that he made complainants good title to the whole of said 700 acres of land, except ¼ of an acre, and that he was guilty of no fraud; that he told complainants the whole truth, and nothing else, in relation to all the land and his title to it.

And having thus fully answered, &c., he prays that said cross-bill be

dismissed, and this respondent allowed to go hence, thereof acquitted, with his reasonable costs and damages for the unjust delay to his original suit, &c.

MARLEY & STEEL,
F. G. SAMPSON,
Solic'tors.

Filed June 2, 1870.

T. B. CARSON, *C. & M.*

Copy of note.

"On the 25th day of December, 1867, we, or either of us, promise to pay William Jordan an amount, in the legal currency of the United States, sufficient to purchase at that time six thousand eight hundred and ninety dollars of the present gold coin of the United States, for value received, in the purchase of a tract of land from him.

"This the 1st day of November, 1866.

"H. R. HALL.
"T. F. CONLEY,
"Per HALL."

[Five dollars United States internal revenue. H. R. H. Nov. 1. 1866. Cancelled.]

The following credits are endorsed on the foregoing note, to wit:

"Received on the within bond thirteen hundred and four dollars (in gold) and 34 cents, this the 23rd day of March, 1868.

"WILLIAM JORDAN."

34 "Received on the within note one hundred and forty-four dollars and ninety-two cents in gold.

"May 27, 1868.

"W. JORDAN."

Exhibit "B" to Jordan's answer.

JOHN WALPOLE
vs.
BENJAMIN F. WALPOLE, OCTAVIA C. WALPOLE, Ellen R. Walpole, Philip Walpole.
} Petition to sell land and negroes.

Be it remembered that, on the 9th day of January, 1861, before the worshipful Samuel A. Thompson, Fred. Bardfield, and Jonathan P. Neighbors, this cause came on for further hearing on the petition, answers, and order herein heretofore, exhibits, proof, and the report of the clerk herein, which is unexcepted to and in all things approved, when it appeared to the satisfaction of the court that William S.
35 Walpole departed this life intestate, in the county of Lauderdale, in the year 1800, leaving the petitioner and defendants his only heirs at law, and that the said W'm S. Walpole was owner and seized in fee, at the time of his death, of the following-described land in Lauderdale County, Tennessee, bounded as follows, to wit: Beginning at a stake, hickory, ash, and dogwood pointers, the northeast corner of the Russell or Cricbfield tract, and in C. W. Anderson's south boundary-line; thence east 126½ poles to a stake, beach, sweet gum, and ash pointers, William Jordan's northwest corner, and in C. W. Anderson's south boundary-line; thence south 63 poles, to an ash, Jordan's corner,

with dogwood and poplar pointers; thence west 127 poles, to a sweet gum and hickory, hickory and dogwood pointers, said Jordan's northwest corner, and in said Russell's east boundary line; thence north 62½ poles, to the beginning, containing 49 acres 51 poles, including and excluding 40 poles, in which there is a grave-yard, which is thus bounded, to wit: Beginning at a poplar in Russell's east boundary-line; thence east 8 poles; thence north 5 poles; thence west 8 poles; thence
36 south to the beginning. And that the said land cannot be partitioned among the said heirs without manifest injury to the interest of those entitled, and that it would be manifest to the interest of said parties that said land be sold for division. * * * *
And that this court, at a former term, granted an order requiring the clerk of this court to sell said land and negroes, and said clerk having made his report herein of the sale of said property, which report is unexcepted to, and is in all things confirmed and approved, and is in the words and figures following, to wit:

JOHN T. WALPOLE
vs.
BENJAMIN WALPOLE ET AL. } Commissioner's report.

The undersigned would respectfully report that he sold the land and the negroes in the pleadings mentioned, at the court-house door, in the town of Ripley, on the 7th day of January, 1861, after having advertised according to the decree of this court, in this cause, when William Jordan became the purchaser of the land, for the sum of eleven hundred and twelve dollars, and executed his note, with James W.
37 *W.* Rucker and Stephen A. Jordan for his security, one note for five hundred and fifty-six dollars, due twelve months after date, from the 7th day of January, 1861, and one note for five hundred and fifty-six dollars, due two years after date, from 7th January, 1861. * * *
All of which is respectfully submitted.

GEORGE JOHNSTON,
Commissioner.

And it appearing to the satisfaction of the court that said sale was made in strict conformity to the former decree of this court herein, and that said land and negroes were sold at a fair price, said sale is in all things confirmed and approved, and the court doth order, adjudge, and decree that the title of said land and negroes be divested out of said petitioner and the defendants and all others, and vested in strict accordance with said report, subject, however, to a lien for the purchase-money.

STATE OF TENNESSEE, *Lauderdale County:*
38 I, Jo. H. Wardlaw, clerk of the county court of said county, do certify that the foregoing is a correct transcript of a decree of record in said court, in minute-book "D," page 545, '6, '7. Witness my hand, at office in Ripley, this 31st May, 1870.

JO. H. WARDLAW, *Clk.*

(Endorsed:) "Filed June 2nd, 1870. T. B. Carson, C. & M."

Deposition of W. C. Doyle, witness for compl't.

1st question by compl't. Please state your business and residence, and

how long you have lived here and pursued the same business and pursuit

Ans. I am a merchant; reside and do business in Dyersburg, and have for several years—some 12 or 15 years altogether.

2nd ques. by same. Please state what was the value, in legal-tender currency of the United States, of the U. S. gold coin December 25, 1867.

Ans. I sold $1,250 00 in gold about that time for, I think, one dollar and thirty-two cents for each dollar in gold.

39 3rd question by same. When was such gold-coin currency taken and accepted as a legal tender for debt?

Ans. Before the war, not since; it is frequently used in paying debts, but only at the premium it is then worth; it is an article of merchandise, its value fluctuating as compared with U. S. currency.

And further this deponent saith not.

W. C. DOYLE.

Sworn to before me November 20, 1868.

G. CHITWOOD, *J. P.*

Deposition of R. A. Burk, witness for compl't.

1st question by compl't. If you were present when compl't was ta'king to def'ts about selling them his land in Lauderdale County, please state what he told them, if anything, in relation to a grave-yard on said land.

Ans. Complainant told the defendants that he did not sell them the grave-yard, and did not wish it inserted in the deed; but as the deed was written, Mr. Hall said he would have that understood when the deed was registering. I was present; wrote the deed and note.

2nd quest. by same. Did the defendants see the grave-yard be-

40 fore the trade was made?

Ans. It was understood before the deed was written; the line run near the grave-yard; so it could be pointed out, which was done.

3rd ques. by same. Do you know what gold coin of the United States was worth in currency on the 25th Dec'r, 1867?

Ans. I do not recollect precisely. I sold some in April following at 33§ premium.

(Defendants excepted to the above testimony as incompetent.)

Cross-examined:

Ques. 1. Were you present when the land was run off and the grave-yard pointed out?

Ans. I was, and carried one end of the chain, and Mr. Conley the other end.

Ques. 2. Who pointed out the grave-yard, and why was the reservation not made when the deed was executed?

Ans. Mr. Jordan pointed out the grave-yard, and I suppose it was an oversight in me, as it had been talked of and generally understood.

Ques. 3. Did you hear Hall or Conley, either of them, agree to the reservation of the grave-yard?

Ans. I did. Mr. Hall is my recollection.

41 Ques. 4. Was the deed and note executed the same day?

Ans. My recollection is, the deed was executed the same day.

Ques. 5. Did the deed and note, as far as you know, constitute the whole of the written contract about the land?

Ans. As far as I know, they did.

Ques. 6. What relation are you of complainant?
Ans. Son-in-law.
And further this deponent sayeth not.

R. A. BURKE.

Sworn to & subscribed before me Nove. 20th, 1868.
G. CHITWOOD, *J. P.*

Deposition of S. A. Jordan, witness for compl't.

1st ques. by compl't. Please state, if you know, whether compl't went around the land in Lauderdale County (he sold to defendants) in company with defendants to show them the lines and character of the land.

Ans. He did go with them around the land to show them the
42 lines, its character, and location. I went along with them. As we went around the land, we passed within twenty or thirty yards of the grave-yard, which is in the northwest corner of the land. Complainant remarked to defendants that he would not sell them the grave-yard, as it was reserved before he bought.

2nd ques. by same. How much land is contained in the grave-yard you speak of?

Ans. About ¾ of an acre.

3rd ques. by same. Was the exhibition of the land and conversation before or after the land was sold?

Ans. Before the land was sold.

(Excepted to by def'ts as incompetent.—LATTA & RICHARDSON.)

Cross-examined:

Ques. 1. What relation are you of complainant?

Ans. His son.

Ques. 2. Does the grave-yard you speak of occupy and cover a fine building-site on said land?

Ans. I don't know that it does.

43 Ques. 3. Describe its location and surroundings.

Ans. It is right in the N. W. corner of the tract of *of* land; the timber south of it is all taken off; it is a high, dry position; towards the south the land slopes tolerably gradually.

Ques. 4. How do you know that complainant went around the land to show them the lines, quality, & location?

Ans. I went around with them.

Ques. 5. Is there wood-land east of the grave-yard?

Ans. Yes, sir.

Re-examined by compl't:

1st question by compl't. Please explain is there or not some timber south of the grave-yard itself on this land?

Ans. There is a little belt of timber between the grave-yard and the field south of it, some twenty or thirty yards wide, which I supposed a part of the grave-yard lot when I said there was no timber south of it. The grave-yard proper is in the corner of the land, with a plain wagon-road north and west of it.

44 And further this deponent saith not.

S. J. JORDAN.

G. CHITWOOD, *J. P.*

Exceptions to R. A. Burk's deposition, question 3, overruled.
T. B. CARSON, *C. & M.*

Exceptions to question 3, S. J. Jordan's deposition, allowed.
T. B. CARSON, *C. & M.*

Complainants prays an appeal to chancellor; which is granted.
T. B. CARSON, *C. & M.*

Deposition endorsed: "Filed November 22d, 1868.
"T. B. CARSON, *C. & M.*"

Deposition of R. A. Burke, witness for compl't.

Quest. 1st by def't Jordan. Are you acquainted with the parties to this suit: H. R. Hall, T. F. Conley, & William Jordan?

Ans. I am.

Quest. 2nd by same. Were you present when W'm Jordan
45 sold his plantation in Lauderdale County to Hall and Conley?

Ans. I was, and wrote the deed.

Quest. 3rd by same. Did the parties go over or around the land and and look at it before the trade was closed?

Ans. They did, and I helped to carry the chain.

Quest. 4th by same. If anything was said by William Jordan to Hall and Conley, or to either of them, about the grave-yard on the land, please state it.

Ans. The grave-yard was pointed out, and a perfect understanding about it, and I was ordered by Mr. Jordan to leave out the grave-yard in writing the deed, but I neglected to do so.

Quest. 5 by same. Please state whether def't Jordan ever claimed the grave-yard or not as his property, and whether he intended or pretended to sell it to Hall & Conley, if you know.

Ans. I know that he never sold the grave-yard to Hall and Conley, and that he never claimed it as his property.

46 Quest. 6th by same. How much more would the 700 acres of land be worth including the grave-yard than it would excluding the grave-yard?

Ans. About ten or fifteen dollars, at the most.

Quest. 7 by same. Could a prudent, watchful man go round that land, examining it with the view of purchasing it, and not notice the grave-yard?

Ans. Not when it was pointed out, as it was in this case.

Quest. 8 by same. What was the difference between gold and United States legal-tender currency December 25th, 1867?

Ans. My recollection is it was about 40 cents when the trade was made, but shortly after that I sold a lot of gold in Cincinnati for 33⅓—mostly small pieces, which is not worth so much as larger ones.

Cross-examined:

Quest 1st. If the grave-yard was not included in the trade, why did Jordan sign the deed as it is?

47 Ans. They said it made no difference, as it was properly understood between the parties.

Quest. 2. Do you pretend to state that the grave-yard was not conveyed by Jordan to Hall & Conley?

Ans. I do. Mr. Jordan told me to leave it out of the deed, which I neglected to do.

Quest. 3rd. How many graves are there in the grave-yard?

Ans. I don't know.

Quest. 4. Who was present when you heard the conversation between

Jordan, Conley, & Hall; where did it take place, and was the conversation with Conley or Hall, or both?

Ans. I do not think there was any one present except the parties interested except myselt. Conley and I carried the chain when the line was run near the grave-yard, when the grave-yard was talked of, and it was talked of at the house when I was writing the deed.

And further this deponent saith not.

48 R. A. BURKE.

Sworn to and subscribed before—

HICK P. DOYLE,
Notary Public.

Deposition of W. D. New, witness for compl't.

1st quest. by compl't. Are you acquainted with the parties to this suit?

Ans. I know all the men.

2nd quest. by same. Did you ever have any conversation with the defendants, or either of them, in reference to a tract of land involved in this suit? If so, please state the time and place of said conversation—all that was said by them or either of them.

Ans. I talked with them on the Jordan place several times about the land; last spring and summer was a year ago—1868. Hall and Conley were both together when they were talking to me, and said that, by throwing the land into a lawsuit, they could get clear of paying the last payment until 1870, and, maybe, out of paying gold at all.

49 3rd quest. by same. In your conversation with the defendants, did they say they were not going to pay Jordan until he brought suit against them?

Ans. They said they were going to put it off as long as possible before they paid him anything; that time was all they wanted.

Further this deponent saith not.

W. D. NEW.

Sworn and subscribed to before me November the 2nd, 1869.

T. B. CARSON, *C. & M.*

Deposition of Z. Mitchell, witness for defendants.

Quest. 1st by def'ts. Please state whether or not you are acquainted with the farm which William Jordan lived on some time since, and the same which said Jordan sold to H. R. Hall and T. F. Conley.

Ans. Yes; I am well acquainted with it.

Quest. 2nd by same. Please state whether or not there is a grave-yard in the northwest corner or near the corner of said land.

50 Ans. Yes; on a high place, and dry wood-land all around it; a very beautiful place for building.

Quest. 4. State if there was a tract of 50 or 60 acres cut off of said farm, including the grave-yard, would not said grave-yard be the most desirable place for a building-site on said tract?

Ans. Yes; there is no other place that is suitable, that I know of, on the 50 acres.

Quest. 5. State, after summing up all the facts in the case, the amount of damage the reservation of a public or family grave-yard where said one is, in your judgment, would be.

Ans. If it was my 50 acres I had rather it was not there by some four or five hundred dollars.

Further this deponent saith not.

Z. MITCHELL.

Sworn & subscribed to before me, May 14th, 1870.

W. B. SAWYER, *J. P.*

Deposition of Abram H. Mitchell, witness for def'ts.

51 Quest. 1st. Please state whether or not you are acquainted with the farm on which W'm Jordan lived some time since, and the same one sold to H. R. Hall & T. F. Conley.

Ans. I am acquainted with it.

Quest. 2nd. State whether or not there is a grave-yard in the north-east corner or near the corner of said farm.

Ans. There is. I have been on said grave-yard.

Quest. 3rd. State whether or not said grave yard is on a high, elevated piece of wood-land, and would it not be a desirable building site.

Ans. It is on a high, elevated place of wood-land, and would be a pretty place to build on.

Quest. 4. State it a tract of land was cut off of said farm of some 50 or 60 acres, including said grave-yard, would not the place occupied by said grave-yard be the most desirable building-site on said tract?

Ans. Yes, sir.

52 Quest. 5th. State, after summing up all the facts in the cause, the amount of damage a reservation of a public or family grave-yard where said one is, in your judgment, would be.

Ans. If the land was mine, I had rather it was not there by six hundred dollars.

Further this deponent saith not.

A. H. MITCHELL.

Subscribed & sworn to before me, May 14th, 1870.

W. B. SAWYER, *J. P.*

Deposition of C. W. Anderson, witness for def'ts.

Quest. 1st by def'ts. Please state whether or not you are acquainted with the farm on which W'm Jordan lived some time since, the one said Jordan sold to H. R. Hall & T. F. Conley.

Ans. Yes, sir; I am very well acquainted with it.

Quest. 2d. State whether or not there is a grave-yard near the north-west corner of said tract of land.

Ans. There is. I have known it ever since it has been there.

53 Quest. 3d. State whether or not the said grave-yard is on a high and elevated place of wood-land, and a very desirable building-site.

Ans. Yes, sir; it is.

Quest. 4th. State, after summing up all the facts in the cause, the amount of damage the reservation of a public or family grave-yard where said one is, in your judgment, would be?

Ans. The damage would be five hundred dollars.

Further this deponent saith not.

C. W. ANDERSON.

Subscribed to & sworn to before me, May 14th, 1870.

W. B. SAWYER,
J. P. for Lauderdale County.

54 *Deposition of H. H. Mahon, witness for defendants.*

Quest. 1st by def'ts. Please state what your occupation was during the year 1867.

Ans. I was sheriff of Haywood County at that time.

Quest. 2nd. State what the premium on gold was during the latter part of the year 1867, say about the 25th December, 1867, in and about Brownsville, Tenn., and at Cageville, Tennessee.

Ans. 25 per cent. premium.

Question 3rd. State whether or not 25 per cent. premium was the ruling rate in the country and small towns in your knowledge at said time, the 25th December, 1867?

Ans. It was.

H. H. MAHON.

Deposition of J. P. Burns, witness for defendants.

Quest. 1st by def'ts. Please state what your occupation was during the year 1867.

55 Ans. I was State and county revenue collector for Haywood County, Tenn., for one thing.

Quest. 2nd. State if you recollect what the premium on gold was the latter part of the year 1867, about the 25th of December, 1867, in and about Brownsville, Tenn., and Cageville, Tenn.

Ans. Some time in the fall and winter of 1867 I could have bought gold in Brownsville and in Cageville for 25 cents premium over greenbacks or national currency.

Question 3rd. State as near the time and all the circumstances connected with a trade you was about making with E. Kail in the year 1867.

Ans. Some time in the month of December I was on, or trying to sell a horse to Mr. E. Kail. Said Kail proposed to pay for said horse in gold, at 25 cents premium. I did not take the gold, but could have got the same at the proposed rates above named.

JOHN P. BURNS.

Subscribed & sworn to before me May 19th, 1870.

56 E. T. AUSTIN,
J. P. for Haywood County.

Deposition of Eli Lucas, sen'r, witness for W'm Jordan.

Quest. 1st. Are you acquainted with the parties to this suit?

Ans. I am.

Quest. 2nd. Are you acquainted wi' the 700-acre tract of land formerly owned by W'm Jordan, which was purchased from said Jordan by H. R. Hall and T. F. Conley, in November, 1866?

Ans. Yes, I am very well acquainted with it.

Quest. 3rd. Do you know anything about the grave-yard in the northwest corner of said 700-acre tract of land? If yea, state how said graveyard is situated, and how much would said grave-yard damage said 700-acre tract of land in your opinion.

Ans. The grave-yard is in the northwest corner of said 700-acre tract, and it is close to the west boundary-line, and I don't think it
57 damages it more than the value of one-fourth part of an acre, and I don't think ¼ acre would be worth more than $7 50.

Quest. 4. How long have you known said 700-acre tract of land, and how far do you live from it?

Ans. I have been well acquainted with it for about 17 or 18 years, and live about 2½ miles from it, on a straight line.

Quest. 5. If 50 acres were cut off from the northwest part of said 700 acre tract how much would the existence of said grave-yard damage said 50 acres?

Ans. Not more than what I have stated, $7 50.

Quest. 6. Is said grave-yard on a high building-site, or is there any other building-site on said northwestern part of said 700-acre tract? State all you know about it.

Ans. The best building would be 70 or 80 yards east of the grave-yard, on said 700-acre tract.

Quest. 7. Describe the north western part of said 700-acre tract
58 of land, and state all the building-sites on said northwestern part of said 700-acre tract.

Ans. I would suppose the high land extends 150 yards east from the grave-yard, and north about 130 or 140 yards.

Quest. 8. Is not it very common for people to have grave-yards on their land, and in their gardens, in this country?

Ans. Very common; I have one in 40 yards of my dwelling.

(Compl'ts Hall and Conley except to the foregoing question, because it is irrelavant to the matters in issue. Exceptions are allowed.—A. B. HEARING, *Clerk*. From which ruling def't Jordan appeals to the chancellor.)

Cross-examined:

Quest. 1. How many graves are there in said grave-yard?

Ans. I don't know, to my own certain knowledge, more than one; there may be more, but I don't know for certain.

Quest. 2. Are there any tombstones and the like standing in said grave-yard, and is the same enclosed?

59 Ans. I think not. If there is any I don't recollect of seeing them.

Quest. 3. Did you know said land before said Jordan owned the same, and were said graves on said land when the said Jordan purchased it?

Ans. I knew the land, and there was one man buried there before Mr. Jordan purchased it, and might have been others.

Quest. 4. Would it not be very undesirable to build a dwelling-house in 80 yards of a grave-yard?

Ans. I should think not. I have a grave-yard in 30 or 40 yards of my house.

Quest. 5. Is not the grave-yard near your house your private family burying ground?

Ans. Yes, sir, it is; but there is one child not belonging to my family buried there.

Quest. 6. Would you as soon have a general burying-ground within 80 yards of your house as not, and would it diminish the value of
60 the place any in your estimation to have such a burying-ground as near your dwelling-house?

Ans. I don't suppose I would want a general burying-ground that near my house.

And further this deponent saith not.

ELI LUCAS.

Subscribed and sworn to before me Nov'r 17th, 1870.

A. B. HEARING, *Clerk.*

Deposition of William Jordan, defendant to cross-bill.

Quest. 1st by counsel. Are you acquainted with the complainants, H. R. Hall and T. F. Conley, and are you the defendant in the cross-bill?

Ans. I am acquainted with H. R. Hall and T. F. Conley, the complainants in the cross-bill, and I am the defendant in said cross-bill.

Quest. 2d. State all that occurred between you and the complainants Hall and Conley in reference to the 700-acre tract of land you
61 sold them in November, 1866, and all that was said about a grave-yard in the northwestern part of said 700-acre tract, and whether you sold the grave-yard to them or not, and how it was that the ¼ acre that said grave-yard contains was put in the deed you made to said Hall and Conley?

Ans. I represented the land to Mr. Hall and Conley in its true character. I told them precisely the situation of the land and the grave-yard. I told them that when I bought the 50 acres of land on which the grave-yard was situated, that I was under the impression that I had bought the grave-yard, but afterwards learned that the court that had decreed the sale of the said 50-acre tract had also decreed that ¼ of an acre be set apart for a grave-yard, and appointed W. B. Sawyer, esq., to lay off the same. I clearly stated repeatedly to Hall and Conley, and I know that they did not misunderstand me, about the situation of
62 the grave-yard, and that it did not belong to me. I didn't claim it. It was clearly understood that the grave-yard did not belong to me, and that I did not sell it to them, and it was put in the deed by Robert Burke, who wrote the same. Myself, Conley, and Hall instructed him not to include the grave-yard in the deed, but he did so through mistake, and having forgotten the instructions given him by myself, Conley, and Hall. When I sold the land to Conley and Hall I took them to the grave-yard and showed them the surveyor's marks who was appointed to lay off the grave-yard. All the above conversation occurred on the said 700-acre tract of land. The deed was written by Robert Burke in the evening after we had run the north and western boundary-lines of said 50-acre tract. I did not notice that the grave-yard was included in the deed until the next day, after I had been to Ripley
63 and acknowledged the deed, and were on the way back. I called Hall's attention to it, and he said he would do anything he could to rectify the mistake. I told him then if he would make a note on the register's book, stating that the grave-yard was not to be included, it would be all right, and he promised to do so; pledg'd me his word and honor as a gentleman that he would do so.

Quest. 3. How long had you owned said 700 acres of land before you sold said land to Hall and Conley, and how many different tracts of land are there in said 700-acre tract, and who did you purchase them from?

Ans. I owned the original purchase, 500 acres, about 15 years before I sold it. I purchased that tract from Francis B. Fogg, of Nashville. About 12 months afterwards I purchased John K. Quinn's tract—about 57 acres. I purchased Benjamin Walpole's tract, containing 104
64 acres, some two or three years after I bought the Quinn land, and

about the year 1860 I bought the 50-acre tract on which the grave-yard is situated, making in all the 700-acre tract.

Quest. 4. How much did you consider said 700-acre tract of land damaged when you owned it by said grave-yard being on said northwestern part of said tract?

Ans. I considered it a matter of no consequence at all. There is an extensive ridge there about two or three hundred yards long, east and west, and 200 yards north and south, and the original owner built about 250 yards southeast of the grave-yard, on a beautiful building-site, and convenient to water. Any man of good taste would prefer building there to building on the ground occupied by the grave-yard, owing to convenience of water, &c.

Quest. 5. How much would said grave-yard damage said 50-acre
65 tract of land if one did not own any other land, and how much did you consider it damaged said 50 acres when you purchased from the clerk of the county court of Lauderdale County?

Ans. I did not consider it any damage at all. It is true, I rather it had not been there, but I did not consider it a matter of any importance. Hall and Conley talked the same way about it when I sold it to them.

Quest. 6th. Did you conceal from Hall and Conley that you had no title to the graveyard when you sold them said land, and were you ever disturbed in the possession of said land during the time you owned it, and have Hall and Conley ever been disturbed in the possession of said land since you sold it to them?

Ans. There never were parties who had a clearer understanding about anything in the world than Hall, Conley, and myself had about
66 the grave-yard on that land, and I never was disturbed in the possession of it, nor have they ever been that I have heard of.

Cross-examined:

Quest. 1. Which is the most elevated point; that occupied by the grave-yard or that occupied by said settlement on said 50 acres of land?

Ans. The grave-yard is more elevated than the old building-situation, but would not be as desirable a building-site, on account of its lying so near the line and the inconvenience of water. There is as high land 100 yards from the grave-yard as that on which the grave-yard is situated, and I would prefer a situation 100 yards off to one right at the grave-yard.

Quest. 2. Is not the said 700-acre tract near the Forked Deer River bottom, and generally a very flat, level piece of land?

Ans. It is at least a mile from Forked Deer bottom, and there
67 is a creek that comes across the land and makes a good deal of bottom land on the 700-acre tract of land, but none of it is subject to overflow.

Quest. 3. How far is the eastern boundary of said tract from the overflow of Forked Deer River Bottom?

Ans. I reckon it is near a mile.

Quest. 4. Is not the piece on which said grave-yard is located a kind of hill or ridge, dry, and elevated above the surrounding bottoms?

Ans. All that portion of the tract is elevated land, but broken—200 or 300 acres of land, high and dry, but broken.

Quest. 5. Why did you not correct the mistake at the time you first discovered it?

Ans. The reason was that the morning after—the deed was written at

night—we came to Ripley. I didn't discover the mistake until we had gotten some 2 or 3 miles on my way home. Hall and myself were
68 riding in a buggy together when the mistake occurred to my mind. I mentioned it immediately, and told Hall to stop the buggy; that we had made a mistake in the deed; that the grave-yard had been included in the deed, which, says I, you know is wrong. I didn't sell you the grave-yard. He acknowledged frankly that I did not. I told him that we would have to go back and correct the mistake; that I had acknowledged the deed before the clerk and that it ought not to be registered with that error in it. Mr. Hall suggested then that it was so late to come back—that we would be in the night before we could get back to my house, and he pledged his word and honor as a gentleman that he would do anything he could to correct the mistake. I then suggested that when he went back to the register after the deed, if he would have a note made under the record to
69 show that the grave-yard should not have been conveyed in the deed, that I supposed it would be sufficient.

Quest. 6. Did you ever have a deed to said 50-acre tract; if yea, was it ever recorded on the register's book?

Ans. I have never gotten a deed for the 50-acre tract. I have never asked for a deed, believing it was a matter of record in the county clerk's office. The land was sold by a decree of the county court.

Re-examined:

Quest. 1. In your answer to 5th question, cross-examination, you say the reason why you did not correct the deed you did not discover the mistake until you had gone 2 or 3 miles on your way home from Ripley, and Hall, one of the complainants, said it could be corrected, and he would correct it. Did you at that time think Hall would have it corrected and do what he said he would do, and has said Hall ever
70 corrected it or agreed to correct it since that time?

Ans. My acquaintance with Mr. Hall was slight at that time. He having agreed so readily to correct the mistake of the grave-yard in the deed, and pledging himself, his word and honor as a gentleman, I thought he would do it, but since that time he has made affidavit in court, upon oath, as I understand, that I had sold him the land with a grave-yard on it without apprizing him of it. I am led to believe that he ought not to be trusted, and that he ought not to be believed, and I would not believe him, where he was the least interested, on oath.

(Complainants in cross-bill except to the foregoing answer, because it is scandalous and impertinent, and to the question because it is leading and suggestive, and asks for witness' thoughts and opinions, and not for facts. Exceptions overruled.—A. B. HEARING, *Clk.*)

And further this deponent saith not.

W'M JORDAN.

Subscribed & sworn to before me Nov. 17th, 1870.
A. B. HEARING, *Clerk.*

71 *Deposition of Stephen J. Jordan, witness, for W'm Jordan.*

Quest. 1. Are you acquainted with complainants in the cross-bill, H. R. Hall and T. F. Conley, and W'm Jordan, defendant in the cross-bill?

Ans. I am.

Quest. 2. Were you present when defendant in the cross-bill, W'm Jordan, sold to H. R. Hall and T. F. Conley 700 acres of land in Lauder-

dale County, district No. 8? If yea, state if you know whether defendant W'm Jordan went round the land he sold to said Hall and Conley with them and showed them the lines and character of the land.

Ans. Mr. Jordan was with them, and went around and showed them the lines and character of the land.

72 Quest. 3. Was anything said to said Hall and Conley about a grave-yard in the northwestern part of said 700-acre tract of land by defendant W'm Jordan? If yea, state all that was said and done by either of the parties to the suit about said grave-yard—all you know about it.

Ans. As well as I remember I was with defendant Jordan, Hall and Conley, and we went around the lines together, and when we got to the northwest corner of the tract of land, defendant Jordan remarked to Hall and Conley that there was a grave-yard of ¾ of an acre, as he supposed at that time, on the 700-acre tract of land, that did not belong to him; consequently he would not sell it to them. He also stated that when the 50 acres was sold he thought he bought the whole tract, but afterwards learned that it was reserved by the court. He showed them the lines that had been marked off around the grave-yard at that time by the surveyor.

73 Quest. 4. Was it your understanding at that time that Hall and Conley were not to get the grave-yard in said land?

Ans. It was understood that they were not to pay for it, and it was not sold to them.

Quest. 5. How much do you think said grave-yard damaged said tract of land, from what you know of the location and character of the land?

Ans. Situated as it is in a tract of land of that size, I would not consider that it damaged the land more than the value of the land occupied by the grave-yard.

Quest. 6. How much do you think it would damage 50 acres cut off from the northwestern end of said 700-acre tract of land?

Ans. Not more than the value of the land it covered.

Cross-examined:

Quest. 1st. Did the said Hall agree, when he bought the land, that the spot occupied by said grave-yard should be excluded?

74 Ans. He did.

Quest. 2. Were you present when the deed from the said W'm Jordan to said Hall was executed, or were you present when the trade between said Jordan and Hall was completed or understood?

Ans. Not when the deed was executed, but I was present when the trade was made.

Quest. 3. How long after the trade was made before the deed was executed?

Ans. I don't know; the next day, I suppose, but don't know.

Quest. 4. What kin are you to said W'm Jordan?

Ans. A son of his.

And further this deponent saith not.

S. J. JORDAN.

Subscribed & sworn to before me Nov'r 17th, 1870.

A. B. HEARING, *Clerk.*

Deposition of W'm C. Nixon, witness for W'm Jordan.

Quest. 1. Are you acquainted with the 700-acre tract of land in

district No. 8 of Lauderdale County, sold by defendant W'm
75 Jordan to complainants, H. R. Hall and T. F. Conley, in cross-bill, and were you present when said Jordan sold said land to said Hall and Conley, in October or November, 1866?

Ans. I am acquainted with the land, and was present at the sale.

Quest 2. Did the defendant, W'm Jordan, in cross-bill, go around the lines of said tract of land with said Hall and Conley when they purchased it of him? And state all that was said about a grave-yard in the northwestern part of said tract of land, and whether defendant Jordan sold said grave-yard to said Hall and Conley; and state all that you know about it.

Ans. He went around the land with them and showed them the grave-yard. I don't remember the exact words of the conversation in reference to the grave-yard, but it was to the effect that there had been an appropriation of ground made for a grave-yard, and that he had no right to control the grave-yard, and consequently did not sell it.
76 At the same time Hall and defendant Jordan traced the lines of the grave-yard, to see how near it was to the corner of the land, and found it to be in the northwest corner of the land. It was understood by the parties that it was not to be included in the deed when it was *wrote* by Burke.

And further this deponent saith not.

W. C. NIXON.

Subscribed & sworn to before me Nov'r 17th, 1870.

A. B. HEARING, *Clerk.*

Caption of court.—November term, 1870.

Pleas before the honorable chancery court held for Lauderdale County, at the court-house in Ripley, on the 3rd Monday in November, 1870, it being the 21st day of said month—present and holding said court the Honorable James Fentress, chancellor of the 10th chancery division of the State of Tennessee.

On the 3rd day of said term, the following proceedings were had and entered of record, to wit:

77 In chancery court at Ripley, Tennessee.

WEDNESDAY, *November 23rd*, 1870.

W'M JORDAN
vs.
H. R. HALL & T. F. CONLEY. } Orig'l bill.

AND

H. R. HALL & T. F. CONLEY
vs.
W'M JORDAN. } Cross-bill.

Be it remembered that this cause came on for hearing on the 23rd day of November, 1870, upon the bill, exhibits, answers, cross-bill, and answer, and proof; and the same being understood by the court, the court is of opinion and doth so adjudge that the complainant has a vendor's lien

upon the land in the pleadings described for the balance of the purchase-money and interest, and is entitled to have the same set up and enforced by a sale of the land, and that defendants are not entitled to any reduction in the price of said land because of the omission by mistakes of the draftman, to except from said conveyance, the
78 ¼ acre known in the pleadings as the "burial-ground," in drafting deed from complainant to defendants.

And it not appearing what amount of purchase-money is now due, it is ordered that it be referred to the clerk and master of this court to report what amount of legal currency of the United States was sufficient to purchase six thousand eight hundred and ninety ($6,890) dollars of the gold coin of the United States on the 25th day of December, 1867, and interest on the said amount to this date, allowing to defendants all just credits for any part of said purchase-money they may have paid to complainant; and if any part payment of said purchase-money was made by defendants in gold, then, and in that case, defendants shall be allowed a credit, not only for the number of dollars in
79 gold so paid, but also, and in addition thereto, the premium on said gold at the time of said payment, i. e., the difference in value between the gold paid and an equal number of dollars in United States Treasury notes, and that he report to the present term of this court, if practicable, and, if not, to the next term of this court; from which decree the defendants pray an appeal to the next term of the supreme court to be held at Jackson; which is granted upon their giving bond for double the amount of the debt, interest, and cost within sixty days after the adjournment of this court.

Appeal bond.

We, H. R. Hall, T. F. Couley, G. W. Bettis, and James A. Carter' acknowledge ourselves indebted to W'm Jordan in the sum of eighteen thousand ($18,00') dollars, to be void if the said H. R. Hall and T. F. Conley shall prosecute with effect an appeal to the next term of
80 the supreme court of Tennessee, at Jackson, by them prayed from a decree rendered against them in favor of said W'm Jordan in the chancery court at Ripley, Tennessee, on the 23rd day of November, 1870, ordering an account to be taken of the amount due said W'm Jordan on the note mentioned in said W'm Jordan's original bill against the said H. R. Hall and T. F. Conley, or, in case of failure to prosecute said appeal successfully, shall pay and satisfy the amount of said note and the damages and cost which may be adjudged against them in the premises by the supreme court. This 20th day of January, 1871.

(Signed) H. R. HALL.
T. F. CONLEY.
G. W. BETTIS.
JA'S A. CARTER.

Witness:
J. N. WARDLOW, *C. & M.*

(Endorsed:) Filed January 20th, 1871. J. N. Wardlow, C. & M.

81 And now, to wit, on the 6th day of June, 1871, the supreme court of the State of Tennessee then being in session at Jackson, it being one of the days of the April term, 1871, of said supreme court, the following proceedings were had and entered of record, to wit:

JUNE THE 6TH, 1871.

WILLIAM JORDAN
vs.
H. R. HALL & T. F. CONLEY. } No. 34. C. D. 14th cir.

This cause is heard upon the appeal of the defendants from a decree of the chancery court at Ripley; and the record, proceedings, and decree of that court being seen and fully considered by this, this court is of the opinion that in the same there is no error, and doth therefore in all things affirm said decree.

And it appearing to the court that the complainant has a vendor's lien upon the land mentioned and described in the pleadings in
82 this cause for the balance of the purchase-money and interest, and is entitled to have the same set up and enforced by a sale of said land, and that the defendants are not entitled to any reduction in the price of said land, because of the omission of the draftsman of the conveyance, by mistake, to except therefrom the ¼ acre known in the pleadings as the "burial-ground;" but this court is of the opinion that said conveyance should be so re-formed and corrected as to exclude said ¼ acre known as "the burial-ground," and doth so order and decree.

And it not appearing what amount of purchase-money is now due, it is ordered that the clerk of this court ascertain and report, instanter, what amount of legal currency of the United States was sufficient to purchase six thousand eight hundred and ninety dollars of the gold coin of the United States on the 25th day of December, 1867, and then, allowing defendants all proper credits in accordance with the decree of the chancellor, what amount of purchase-money on said land is
83 now due to the complainant from the defendants; and until the coming in of said report other matters are reserved.

And now, on the coming in of said report, the same being unexcepted to, is in all things confirmed.

And it appearing from said report that the purchase-money due from defendants to the complainant for said land, after allowing all proper credits, amounts at this date to the sum of eight thousand seven hundred and forty-one $\frac{17}{100}$ dollars, ($8,741\frac{17}{100}$,) it is therefore ordered, adjudged, and decreed that the complainant recover of the defendants said sum of eight thousand seven hundred and forty-one $\frac{17}{100}$ dollars, with interest thereon at the rate of six per centum per annum until the same is paid; and unless said sum is paid into the hands of the clerk of this court within sixty days from this date said clerk is ordered, after giving legal notice of the time, terms, and place of sale in some
84 newspaper published within this State, to sell said land mentioned and described in the pleadings, at the court-house door, in Ripley, to the highest bidder.

And, on motion of the complainant, it is ordered that said sale be made on a credit of seven months, taking bond and approved security and retaining a lien for the payment of the purchase-money, and that the equity of redemption and all right of repurchase be forever barred. The clerk will report his action in the premises to the next term of this court; until when other matters are reserved.

It is further ordered and decreed that the defendants, and G. W. Bettis and Ja's A. Carter, their sureties in appeal-bond, pay the cost of this cause in this court and in the court below, for which execution may issue.

85 And afterwards, to wit, on the 29th day of June, 1871, it being also one of the days of said April term, 1871, the said supreme

court still being in session at Jackson, the following further proceedings were had and entered of record, to wit:

JUNE THE 29TH, 1871.

WILLIAM JORDAN
vs.
H. R. HALL & T. F. CONLEY. } No. 34. C. D. 14th cir.

Came the defendants, by their solicitor, and moved the court to set aside and vacate the judgment and decree entered in this cause on a former day of the present term of this court, and let the same be re-entered as of this date; which motion, being understood by the court, is allowed; and it is ordered and adjudged that the said judgment and decree entered in this case on the 6th day of June, 1871, (that being one of the days of the present term of this court,) be, and the
86 same hereby is, set aside, vacated, and for nothing held.

And thereupon it is ordered, adjudged, and decreed by the court that said judgment and decree be re-entered, and stand, remain, and be in full force and effect of this date in the words and figures following:

WILLIAM JORDAN
vs.
H. R. HALL & T. F. CONLEY } No. 34, C. D. 14th cir.

This cause is heard upon the appeal of the defendants from a decree of the chancery court at Ripley, and, the record, proceedings, and decree of that court being seen and fully considered by this, this court is of the opinion that in the same there is no error, and doth therefore in all things affirm said decree.

And it appearing to the court that the complainant has a vendor's lien upon the land mentioned and described in the pleadings in this cause for the balance of the purchase-money and interest, and is
87 entitled to have the same set up and enforced by a sale of said land, and that the defendants are not entitled to any reduction in the price of said land because of the omission of the draftsman of the conveyance, by mistake to except therefrom the ¼ acre known in the pleadings as the burial-ground; but this court is of the opinion that said conveyance should be so re-formed and corrected as to exclude said ¼ acre, known as "the burial-ground," and doth so order and decree.

And it not appearing what amount of purchase-money is now due, it is ordered that the clerk of this court ascertain and report instanter, what amount of legal currency of the United States was sufficient to purchase six thousand eight hundred and ninety dollars of the gold coin of the United States on the 25th day of December, 1867, and then, allowing defendants all proper credits in accordance with the decree of the chancellor, what amount of purchase-money on said
88 land is now due complainant from defendants; and until the coming in of said report other matters are reserved.

And now on the coming in of said report, the same, being unexcepted to, is in all things confirmed.

And it appearing from said report that the purchase-money due from defendants to complainant for said land, after allowing all proper credits, amounts to this date to the sum of eight thousand seven hundred and fifty-nine $\frac{94}{100}$ dollars, ($8,759 94,) it is therefore ordered, adjudged, and decreed that the complainant recover of the defendants said sum of eight thousand seven hundred and fifty-nine $\frac{94}{100}$ dollars, with interest thereon at the rate of six per centum per annum until the

same is paid; and unless said sum is paid into the hands of the clerk of this court within sixty days from this date, said clerk is
89 ordered, after giving legal notice of the time, terms, and place of sale in some newspaper published within this State, to sell said land mentioned and described in the pleadings, at the court-house door in Ripley, to the highest bidder.

And on motion of complainant, it is ordered that said sale be made on a credit of seven months, taking bond and approved security, and retaining a lien for the payment of the purchase-money, and that the equity of redemption and all right of repurchase be forever barred. The clerk will report his action in the premises to the next term of this court; until when other matters are reserved.

It is further ordered and decreed that the defendants, and G. W. Bettis and Ja's A. Carter, their sureties in appeal bond, pay the cost of this cause in this court and in the court below, for which execution may issue.

90 *Bond.*

Know all men by these presents that we, H. R. Hall, T. F. Conley, G. W. Bettis, & Ja's A. Carter, and Perry Farrow, James B. Powell, acknowledge ourselves indebted to W'm Jordan in the full and just sum of sixteen thousand dollars, to be paid the said Jordan, their certain attorneys, agents, and executors, assigns, &c., to which payment, well and truly to be made, we bind ourselves, our heirs, and executors, jointly and severally, firmly by these presents; sealed with our seals this the day of June, A. D. 1871.

Whereas lately, at a term of the supreme court of the State of Tennessee begun and held at Jackson, Tennessee, on the 1st Monday in April, 1871, and on a day of said term, to wit, on the 6th day of June, A. D. 1871, in a suit pending in said court between H. R. Hall & T. F. Conley, Ja's A. Carter, and G. W. Bettis, and W'm Jordan, a decree was rendered against the said H. R. Hall, T. F. Conley, Ja's A.
91 Carter, & G. W. Bettis for eight thousand seven hundred and forty-one & $\frac{17}{100}$ dollars & cost of suit, and the said H. R. Hall, T. F. Conley, James A. Carter, and G. W. Bettis having obtained a writ of error from said decree, returnable to the Supreme Court of the United States at Washington, D. C., and having filed a copy thereof in the clerk's office of said court, to reverse the decree in the aforesaid suit, and citation directed to the aforesaid Jordan, citing and admonishing him to be and appear at a Supreme Court of the United States of America, to be held at Washington, D. C., on the first Monday of December, A. D. 1871:

Now, the condition of this obligation is such, that if the said H. R. Hall & T. F. Conley, James A. Carter, and G. W. Bettis shall prosecute their said writ of error with effect and answer all damages and costs, if they fail to make their writ of error and their pleas good, then
92 the above obligation to be void; otherwise to remain in full force and effect.

(Signed)

H. R. HALL,
By A. A. FREEMAN, *Att'y.*
T. F. CONLEY,
By A. A. FREEMAN, *Att'y.*
JA'S A. CARTER,
By A. A. FREEMAN, *Att'y.*
G. W. BETTIS.
P. FARROW.
J. B. POWELL.

(Endorsed:)

The above bond was signed in my presence, and the same approved as good and solvent on satisfactory testimony, June 29th, 1871.

(Signed) A. O. P. NICHOLSON,
Chief Justice, &c.

Citation.

THE UNITED STATES OF AMERICA:

To WILLIAM JORDAN, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States to be holden at Washington on the
93 first Monday in December next, pursuant to a writ of error filed in the clerk's office of the supreme court of Tennessee, at Jackson, wherein you are complainant and H. R. Hall, T. F. Conley, G. W. Bettis, & James A. Carter are defendants, to show cause, if any you have, why the judgment and decree rendered against said defendants should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the Hon. A. O. P. Nicholson, chief justice of the said supreme court of Tennessee, at Jackson, on this the 29th day of June, one thousand eight hundred and seventy-one.

(Signed) A. O. P. NICHOLSON,
Chief Justice, &c.

(Endorsed:)

Copy to be served on Isaac M. Steele, att'y for W'm Jordan, complainant.

(No signature.)

94 Returns: Within came to hand on the 4th day of July, A. D. 1871.

(Signed) CHA'S C. GREGGS,
Sheriff of Lauderdale County.

Returned: I. M. Steele not to be found in my county. July 8th, 1871.

(Signed) C. C. GREGGS,
Sheriff of Lauderdale County.

THE STATE OF TENNESSEE:

I, John H. Freeman, clerk of the supreme court of said State, for the western division thereof, at Jackson, certify that the foregoing and hereunto-attached 94 pages contain a full and perfect transcript of the record, proceedings, and decrees in the cause lately pending in said court wherein William Jordan is complainant and H. R. Hall and T. F. Conley are defendants, as well as a true copy of the bond and citation, with the endorsements and returns thereon, as the same appears of record now on file in my office.

95 In testimony whereof I have hereunto set my hand and affixed the seal of said court, at office, in the city of Jackson, on this the 19th day of December, in the year of our Lord one thousand eight hundred and seventy-one, and of American independence the 96th year.

[SEAL.] JNO. H. FREEMAN, *Clk.*

96 In the supreme court of Tennessee, at Jackson.

WILLIAM JORDAN
vs.
H. R. HALL AND T. F. CONLEY.

To Isaac M. Steele, counsel for plaintiff below in the above case.
You are hereby notified that the defendants have sued out a writ of error in this case to the Supreme Court of the United States.

FREEMAN & McFARLAND,
LATTA & RICHARDSON,
Counsel for Plaintiff in Error.

(Indorsed :) W'm Jordan vs. H. R. Hall and T. F. Conley. Citation. Rec'd 75 cts., n'ry & J. P. fees. Ben. F. Loeke.

97 In the supreme court of Tennessee, at Jackson.

WILLIAM JORDAN
vs.
H. R. HALL AND T. F. CONLEY.

STATE OF TENNESSEE, *Tipton County :*
Came to hand on the first day of March, 1872.

BEN. F. LOEKE,
Sh'ff of Tipton Co.

Served on the within-named Isaac M. Steele, by delivering a copy of the within citation this the first day of March, 1872.

BEN. F. LOEKE,
Sh'ff of Tipton Co.

STATE OF TENNESSEE, *Tipton County :*
Personally appeared before me on this the first day of March, 1872, Ben. F. Loeke, sh'ff of Tipton County, and made oath that he served the within citation on Isaac M. Steele, counsel for plaintiff therein, by delivering to him a copy of said citation on the first day of March, 1872.

BEN. F. LOEKE,
Sh'ff of Tipton Co.

Sworn to before me this the first day of March, 1872.

S. R. SHELTON,
J. P. for Tipton Co.

98 UNITED STATES OF AMERICA :

The President of the United States to the honorable judges of the supreme court of the State of Tennessee, greeting :

Because in the record and proceeding as also in the rendition of the judgment of a plea which is in the said supreme court before you, or some of you, being the highest court of law or equity in the said State of Tennessee in which a decision could be had in the said suit between W'm Jordan, complainant, H. R. Hall, T. F. Conl'y, James A. Carter, G. W. Bettis, defendants, wherein was drawn in question the validity

of a treaty or statute of or *under* authority exercised under the
99 said State, on the ground of their being repugnant to the Constitution, treaties, or laws of the United States, and the decision was in favor of their validity; or wherein was drawn in question the construction of a clause of the Constitution or of a treaty or statute of, or commission held under, the United States, and the decision was against the title, right, privilege, or exemption specially set up or claimed under such clause of the Constitution, statute, or commission, a manifest error hath happened, to the great damage of the said H. R. Hall, T. F. Conl'y, James A. Carter, & G. W. Bettis, as by their complaint appears: We, being willing that error, if any hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment
100 be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the first Monday of December next, in said Supreme Court to be then & there held, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct the errors aforesaid and do what of right and according to the laws and custom of the United States should be done.

Witness the Hon. Salmon P. Chase, Chief Justice of the said Supreme Court, the 29 d'y of June, in the year of our Lord one thousand eight hundred & seventy-one.

101 Witness my hand and the seal of the United States circuit court for the district of West Tenn., at office in Memphis, this 29 June, 1871.

[SEAL.] H. E. ANDREWS, *Clk.*

Costs, 1 00.

(Indorsed:)
W'm Jordan vs. H. R. Hall et al. Writ of error.
Writ of error & supersedeas allowed.

A. O. P. NICHOLSON,
Chief Justice.

Issued 29 June, 1871.

Filed in the office of the clerk of the supreme court of Tennessee, at Jackson, June 29, 1871, and copy made & filed same day, and citation and copy thereof issued to sheriff Lauderdale County.

Sup. C't U. S., December term, 1871. No, 632. Hall et al. vs. Jordan. Writ of error. Filed 15th Ap'l, 1872.

(Indorsement on cover:) No. 632. H. R. Hall, T. F. Conley, G. W. Bettis, and James A. Carter, plaintiffs in error, vs. William Jordan. Tennessee sup. c't. Filed 19th March, 1872.

Supreme Court of United States

October Term, 1873.

No. 154.

HALL & CONELLY,

vs.

JORDON.

Error to the Supreme Court of Tennessee.

The bill was filed by the defendant in error, against the plaintiffs in error, to enforce an alleged vendor's lien.

On the 1st of November, 1866, the defendant in error sold to the plaintiffs certain lands in Tennessee, containing about seven hundred acres, for, as stated in the deed, the sum of thirteen thousand dollars. The stamps affixed to the deed were only thirteen dollars.

In the Chancery Court in which the bill was filed, as in the Supreme Court of Tennessee to which the case was carried by appeal, the plaintiffs in error allege that they had no title to the land because the deed purporting to convey it, was not stamped according to the provisions of the several Stamp Acts of the United States.

This defence was not noticed in the decree of either of the said Courts, and the plaintiffs in error were decreed to pay whatever should be found to be the balance of the purchase money on the report of the master to whom the matter was referred, and that in default of such payment the land should be sold. The design of the Revenue Acts was for the benefit of the United States, and are, therefore, so to be construed as to attain that object.

By the provision in the Act of the 13th July, 1866, a portion of the Act of June 30th, 1864, is repealed, and the following substituted: "That it shall not be lawful to record any instrument, document or paper, required by law to be stamped, unless a stamp or stamps of the proper amount shall have been affixed, and cancelled in the manner required by law; and the record of any such instrument, upon which the proper stamp or stamps aforesaid, shall not have been affixed and cancelled as aforesaid, shall be utterly void, and shall not be used in evidence."—Statutes at large, vol , p. 141.

The amount of stamps required is one dollar for every thousand dollars.

The question, therefore, as to the sufficiency of the stamp in this instance is whether the thirteen thousand dollars, consideration money stated in the deed, is that amount in currency or an amount in gold which is to be paid for by the debtor in currency equivalent to that amount in gold. If that is the meaning of the contract then the stamp was insufficient. The complainant below alleges in his bill, and proves by the notes which he received for the purchase money, that he was to be paid a sum in the legal currency of the United States, "sufficient to purchase" gold from time to time as the payment might fall due.

The contract, therefore, as appears by complainant's own statement, was a contract for an amount in currency which would buy the nominal amount agreed to be paid in gold. The thirteen thousand dollars then, stated as the consideration in the

deed, is really an amount in currency which would buy that amount in gold. And as the value of the currency at that time was much less than the value in gold, the true consideration for the Deed exceeded thirteen thousand dollars by the difference between gold and currency.

And consequently the stamps on the deed were less than the law required. To permit the complainant to state as the consideration for the deed an amount in currency, and to permit him to exact a higher amount, which would enable him to purchase that sum in gold, is to permit him to defraud the revenue.

It is submitted, therefore, to the Court that on this ground the laws of the United States having been disregarded by the decree below that decree should be reversed.

REVERDY JOHNSON,
For Plaintiffs in Error.

MURPHY & CO., PRINTERS.

IN THE

Supreme Court of the United States.

HALL, CONLEY, AND OTHERS,
vs.
WILLIAM JORDAN.
No. 154.

Brief of deft. in error.

This is a writ of error to the supreme court of Tennessee to bring up a chancery proceeding instituted by the defendant in error to enforce his lien for the purchase-money of a tract of land sold by him to Hall & Conley.

At the time of preparing this paper the plaintiffs in error have not filed any brief, nor made any assignment of errors in the record. But in their brief on the motion to dismiss for want of jurisdiction, they said "the only question on which the writ of error can be sustained is, that the stamps affixed to the deed were not sufficient. * * * They amounted to only $13, when they should have been $13.50."

The consideration expressed in the deed is $13,000, and the stamp affixed was for $13, as required by law. (See the deed, *transcript*, pp. 2 and 3.)

But it appears from the pleadings (cross-bill, pp. 7 and 8, and the answer, p. 10) that the land was sold for $13,000 in gold coin, of which $6,500 was paid in cash on the 1st November, 1866, and a note given for the balance, with interest, amounting to $6,890, payable on the 25th December, 1867.

The plaintiffs in error seem to consider the amount of

interest included in this note as part of the consideration, which ought to have been covered by the stamp.

Or, possibly, they may insist that, as the note was for so much currency as would purchase $6,890 in gold coin, at the time of its maturity, the stamp was to be measured by the amount of currency eventually to be paid.

In either case the objection is frivolous and unsound. The consideration of the deed was $13,000 in gold coin. Whether that was to be paid at the time of sale, or at a future day with interest, was of no consequence as to the stamp. The interest was not a part of the consideration for the land; it was only for the use of the money during a period of fourteen months.

As to the other point, no man could tell on the 1st of November, 1866, how much currency would be required to purchase gold on the 25th December, 1867, or even that legal-tenders would not be equivalent to gold at that time. But there has never been any law, so far as I can find, requiring the stamps on deeds or other instruments to be regulated by the currency values, when the transactions were for gold coin. The ninth section of the act of July 13, 1866, (14 Stat., 147,) applies only to returns of income and taxable products, which were to be made to the assessors and reduced to currency values. That no such requirement was made as to stamp taxes, see 13 Stat., p. 291, and schedule B, p. 299.

It is apparent that the writ of error in this case, which has delayed the proceedings in the court below for two years and a half, was sued out "merely for delay," and comes strictly within the letter and spirit of the 23d rule of this Court. The stamp affixed to the deed was exactly what the law required. Now, supposing the plaintiffs in error honestly doubted this, they had it in their power to correct the supposed error by applying to the collector; and as it is evident no fraud was intended, the correction

would have cost them fifty cents. By the practice in Tennessee, a vendee must furnish deeds and stamps. In this proceeding, therefore, the plaintiffs in error are endeavoring to take advantage of their own wrong, as it was their duty to affix the proper stamp to the deed. For this reason, as well as for those already stated, the defendant in error asks for damages at the rate of *ten per cent.*, in addition to interest, in accordance with the rule aforesaid.

FRED. P. STANTON.
For the Defendant in Error.

WASHINGTON, *November* 26, 1873.

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This is a motion &
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